

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SJR 952

INTRODUCER: Senator Dockery

SUBJECT: Trust Funds

DATE: March 7, 2010

REVISED: 3/10/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	GO	Favorable
2.			FT	
3.			WPSC	
4.				
5.				
6.				

I. Summary:

The joint resolution proposes an amendment to the state constitution to require a two-thirds vote and a separate bill by the Legislature to use the proceeds of trust funds for purposes other than intended.

This bill substantially amends s. 19, article III of the State Constitution.

II. Present Situation:

Trust funds are pools of capital or assets dedicated to a specific constitutional or statutory purpose. As such they can be distinguished from general tax revenues. Governmental trusts can be distinguished from private trusts by the concept of *ownership*. In a private trust account an administrator discharges a fiduciary to act in the best interests of a benefitting party, but it is the beneficiary who retains an ownership interest in the corpus of the principal. The usual standards accompanying this duty are prudence, exclusivity of purpose, loyalty to the beneficiary, and sole and exclusive benefit. In a governmental trust it is the governmental entity that has functional or legal ownership, usually established by law, and the proceeds of the trust are customarily, but not exclusively used, for the named purpose by the fund's custodian.

There are 1000 references to the term "trust fund" in the Florida Statutes and there are several hundred named funds.¹ All trust funds share the following common attributes: they are for operating or non-operating purposes; for broad programs or individual projects; for the

¹ A listing of all trust funds, their financial activity, and administrative assessments can be obtained at www.myfloridacfo.com/aadir/financial_statewide_reporting/mastertflisting.pdf.

separating, or clearing, of receipts into sub-accounts; or for the smoothing of irregular cash flows by acting as a source of loans or working capital. These funds can be further grouped into several broad functional categories that reflect their uses and the relationship to ownership:

Fiduciary Trusts: the most prominent examples of these are the System Trust Fund and the Public Employees Optional Retirement Trust Fund administered by the Board of Administration on behalf of the participants in the Florida Retirement System (FRS). Employer payroll contributions are deposited into these accounts for investment. In the case of the defined benefit plan in the FRS, the Board, as a governmental entity, retains ownership of the amounts as that pension choice entitles the participant to a life annuity only, and not ownership of the corpus. In the case of the Investment Plan, a defined contribution alternative, the participant owns the contract and, upon achieving vested rights after one year of creditable service, has complete ownership of the accumulated principal and its earnings. A similar participant ownership relationship exists in the Deferred Compensation Plan established under s. 112.215, F.S., although it is not a pension plan. Because these plans were established for recognition under Titles 26 and 29 of the United States Code to be exempt from federal taxation, the plans confer significant duties upon the sponsor for the maintenance of that tax-exempt status. The Legislature's ability to access any of these funds unrelated to the underlying benefit obligation or the payment of expenses is similarly constrained.

Endowments: Donors to institutions of higher education give money and non-monetary assets to such entities accompanied by restrictions on their usage. The form that these trusts take – testamentary, charitable remainder, rabbinical, or other forms affecting the sharing of intellectual property or patent royalties and the like – allow the donor to realize significant tax and estate planning benefits. The receiving party must adhere to the terms of the donation. Section 1010.10, Florida Statutes, establishes the *Florida Uniform Management of Institutional Funds Act*. It is the receiving, governmental entity that must adhere to strict statutory criteria to avoid a breach of fiduciary duty to the donor. Some of these funds may also be held off-budget and the reach of an appropriations process may be affected by this location.

Grants-in-Aid: the State of Florida participates in a variety of federally influenced programs funded both by discretionary federal general revenues as well as dedicated trust revenues. It is an ordinary financial practice in such matters for the State of Florida to create a trust fund to separate these revenues to facilitate their auditing and accountability. Federal law or regulation establish the purposes of these relationships and permit an allocation for administrative expenses by the grantee. The State of Florida also acts as a grantor when it participates in revenue sharing with units of local government. The major shared revenue elements – motor fuel taxes, specific sales tax revenues, insurance premium taxes, and severance taxes - occur within a series of trust funds with the State of Florida acting as a grantor.

Segregated Funds: Funds not affected by the above categories may still be classified as trusts and the legislature establishes many of these relationships by law to separate discrete funding streams for accountability purposes. It may also desire to recognize the activity as having an enterprise or franchise relationship – as in the case of the (Florida) *Turnpike Enterprise*, university bookstores, energy or telecommunication utilities, occupational regulation, state prison industries, or turnpike rest areas - in which agency operations are designed to replicate a private sector business model.

Section 215.32, F.S., establishes the types of funding accounts that are maintained in the state treasury, the purposes of specific trust funds, and limitations of financial access to named funds. Subsubparagraph 215.32(2)(g)4.a., F.S., provides as follows:

4.a. Notwithstanding any other provision of law restricting the use of trust funds to specific purposes, unappropriated cash balances from selected trust funds may be authorized by the Legislature for transfer to the Budget Stabilization Fund and General Revenue Fund in the General Appropriations Act.

Sections 215.20 and 215.23, F.S., permits the imposition of a service charge on specified trust funds that are a part of the state treasury. Exempted from this surcharge are those funds named in ss. 215.211, 215.22 and 215.24, F.S., The proceeds of these charges are deposited in the General Revenue Fund and are available for the appropriations purposes of the Legislature. Investment interest, or the amounts earned on deposits in the state treasury, are also deposited into the General Revenue Fund.

Sections 215.3206, 215.3207, and 215.3208, F.S., govern the provisions on the creation and reauthorization of trust funds affected by the provisions of s. 19(f), art. III, of the State Constitution. Section 216.023, F.S., establishes a classification template for the review of current trust funds as part of the annual legislative budget instructions.

From time-to-time the Legislature makes transfers, or “sweeps,” out of such trust funds to supplement general tax revenues.

On March 2, 2010, the Florida Senate passed and sent to the House of Representatives CS/CS/SB 1158. That bill exempted the Division of Licensing Trust Fund in the Department of Agriculture and Consumer Services from the provisions of s. 215.32, F.S., that permits the transfer of unappropriated cash balances to the General Revenue Fund.

III. Effect of Proposed Changes:

The proposed joint resolution prohibits the use of trust fund revenues for other purposes without a two-thirds vote of the Senate and House of Representatives in a separate bill for that purpose.

Other Potential Implications:

Discussed under the heading *Other Constitutional Issues* is a circumstance in which the proposal would impair its own provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

As discussed, above, legislative appropriations made after the effective date of the amendment will be governed by its provisions. Assuming a November 2010 ballot and a January effective date, the restriction will apply to actions taken by the 2011 and successor legislatures.

While there is no direct impairment of s. 215.32, F.S., on the use of excess trust fund revenues, legislative practice will have to be revised accordingly.

D. Other Constitutional Issues:

It is unclear from the text of the bill whether the two-thirds vote will endure permanently or exist only for the duration of the trust fund and its five-year cycle. Should a trust fund expire or be repealed this would also nullify the restriction on the two-thirds vote.

The State Constitution requires proceeds of abolished trust funds to revert to the General Revenue Fund. Assuming no impairment of any underlying trust relationship occurs, as discussed above, one of the consequences of the proposal could cause the proceeds of abolished trust funds to be subject to no restriction on use or depletion as they would now become general tax revenues. While the creation of a trust fund requires a three-fifths vote, the abolition of one requires only a simple majority or the absence of any action at all.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is a nominal expense associated with the preparation and printing of ballot language and their advertising in newspapers of general circulation. The Division of Elections in the Department of State estimates this average ballot cost summary at \$102,053. The cost is a direct function of the length of text with the average cost per word of \$94.68.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
